

Introduced by Senator Correa

February 16, 2011

An act to amend Sections 48900 and 48915 of the Education Code, relating to pupil rights.

LEGISLATIVE COUNSEL'S DIGEST

SB 453, as amended, Correa. Pupil rights: ~~bullying~~. *bullying: suspension and expulsion.*

Existing law prohibits the suspension of a pupil from school or the recommendation of a pupil for expulsion from school unless a school district superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has committed any of several specified acts, among which is having engaged in an act of bullying. For the purposes of this provision, bullying is defined to include an act of sexual harassment or hate violence, or threats or intimidation directed against school pupils or personnel, and to include bullying committed by electronic means, as defined.

~~This bill would express the intent of the Legislature to enact legislation that would ensure that appropriate actions are taken and reporting requirements are implemented for public elementary and secondary school pupils who are facing possible suspension or expulsion as a result of alleged incidents of bullying, as defined.~~

The bill would also define bullying to include acts motivated by specified actual or perceived characteristics of the victim.

Existing law requires the principal or the superintendent of schools to recommend the expulsion of a pupil for commission of specified acts committed at school or at a school activity off school grounds, unless

the principal or superintendent finds that expulsion is inappropriate, due to the particular circumstance.

This bill would include acts of bullying that have persisted and reoccurred despite repeated efforts at remediation and termination of the behavior by the principal or the superintendent of schools on the list of acts for which expulsion may be recommended.

Because the bill would increase the duties of local educational agencies, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 48900 of the Education Code is amended
2 to read:

3 48900. A pupil shall not be suspended from school or
4 recommended for expulsion, unless the superintendent or the
5 principal of the school in which the pupil is enrolled determines
6 that the pupil has committed an act as defined pursuant to any of
7 subdivisions (a) to (r), inclusive:

8 (a) (1) Caused, attempted to cause, or threatened to cause
9 physical injury to another person.

10 (2) Willfully used force or violence upon the person of another,
11 except in self-defense.

12 (b) Possessed, sold, or otherwise furnished a firearm, knife,
13 explosive, or other dangerous object, unless, in the case of
14 possession of an object of this type, the pupil had obtained written
15 permission to possess the item from a certificated school employee,
16 which is concurred in by the principal or the designee of the
17 principal.

18 (c) Unlawfully possessed, used, sold, or otherwise furnished,
19 or been under the influence of, a controlled substance listed in

Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, an alcoholic beverage, or an intoxicant of any kind.

(d) Unlawfully offered, arranged, or negotiated to sell a controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, an alcoholic beverage, or an intoxicant of any kind, and either sold, delivered, or otherwise furnished to a person another liquid, substance, or material and represented the liquid, substance, or material as a controlled substance, alcoholic beverage, or intoxicant.

(e) Committed or attempted to commit robbery or extortion.

(f) Caused or attempted to cause damage to school property or private property.

(g) Stolen or attempted to steal school property or private property.

(h) Possessed or used tobacco, or products containing tobacco or nicotine products, including, but not limited to, cigarettes, cigars, miniature cigars, clove cigarettes, smokeless tobacco, snuff, chew packets, and betel. However, this section does not prohibit use or possession by a pupil of his or her own prescription products.

(i) Committed an obscene act or engaged in habitual profanity or vulgarity.

(j) Unlawfully possessed or unlawfully offered, arranged, or negotiated to sell drug paraphernalia, as defined in Section 11014.5 of the Health and Safety Code.

(k) Disrupted school activities or otherwise willfully defied the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties.

(l) Knowingly received stolen school property or private property.

(m) Possessed an imitation firearm. As used in this section, “imitation firearm” means a replica of a firearm that is so substantially similar in physical properties to an existing firearm as to lead a reasonable person to conclude that the replica is a firearm.

(n) Committed or attempted to commit a sexual assault as defined in Section 261, 266c, 286, 288, 288a, or 289 of the Penal Code or committed a sexual battery as defined in Section 243.4 of the Penal Code.

(o) Harassed, threatened, or intimidated a pupil who is a complaining witness or a witness in a school disciplinary proceeding for the purpose of either preventing that pupil from being a witness or retaliating against that pupil for being a witness, or both.

(p) Unlawfully offered, arranged to sell, negotiated to sell, or sold the prescription drug Soma.

(q) Engaged in, or attempted to engage in, hazing. For purposes of this subdivision, “hazing” means a method of initiation or preinitiation into a pupil organization or body, whether or not the organization or body is officially recognized by an educational institution, ~~which~~ *that* is likely to cause serious bodily injury or personal degradation or disgrace resulting in physical or mental harm to a former, current, or prospective pupil. For purposes of this subdivision, “hazing” does not include athletic events or school-sanctioned events.

(r) *(1)* Engaged in an act of bullying, including, but not limited to, bullying committed by means of an electronic act, as defined in subdivisions (f) and (g) of Section 32261, directed specifically toward a pupil or school personnel.

(2) Engaged in an act of bullying, including, but not limited to, bullying committed by means of an electronic act, as defined in subdivisions (f) and (g) of Section 32261, directed specifically toward a pupil or school personnel motivated by any of the following actual or perceived characteristics of the victim:

(A) Disability.

(B) Gender.

(C) Nationality.

(D) Race or ethnicity.

(E) Religion.

(F) Sexual orientation.

(G) Association with a person or group with one or more of these actual or perceived characteristics.

(s) A pupil shall not be suspended or expelled for any of the acts enumerated in this section, unless that act is related to school activity or school attendance occurring within a school under the jurisdiction of the superintendent of the school district or principal or occurring within any other school district. A pupil may be suspended or expelled for acts that are enumerated in this section

1 and related to school activity or attendance that occur at any time,
2 including, but not limited to, any of the following:

- 3 (1) While on school grounds.
- 4 (2) While going to or coming from school.
- 5 (3) During the lunch period whether on or off ~~the~~ campus.
- 6 (4) During, or while going to or coming from, a school
7 sponsored activity.

8 (t) A pupil who aids or abets, as defined in Section 31 of the
9 Penal Code, the infliction or attempted infliction of physical injury
10 to another person may be subject to suspension, but not expulsion,
11 pursuant to this section, except that a pupil who has been adjudged
12 by a juvenile court to have committed, as an aider and abettor, a
13 crime of physical violence in which the victim suffered great bodily
14 injury or serious bodily injury shall be subject to discipline pursuant
15 to subdivision (a).

16 (u) As used in this section, “school property” includes, but is
17 not limited to, electronic files and databases.

18 (v) A superintendent of the school district or principal may use
19 his or her discretion to provide alternatives to suspension or
20 expulsion, including, but not limited to, counseling and an anger
21 management program, for a pupil subject to discipline under this
22 section.

23 (w) It is the intent of the Legislature that alternatives to
24 suspension or expulsion be imposed against a pupil who is truant,
25 tardy, or otherwise absent from school activities.

26 *SEC. 2. Section 48915 of the Education Code is amended to*
27 *read:*

28 48915. (a) Except as provided in subdivisions (c) and (e), the
29 principal or the superintendent of schools shall recommend the
30 expulsion of a pupil for any of the following acts committed at
31 school or at a school activity off school grounds, unless the
32 principal or superintendent finds that expulsion is inappropriate,
33 due to the particular circumstance:

34 (1) Causing serious physical injury to another person, except
35 in self-defense.

36 (2) Possession of any knife or other dangerous object of no
37 reasonable use to the pupil.

38 (3) Unlawful possession of any controlled substance listed in
39 Chapter 2 (commencing with Section 11053) of Division 10 of the
40 Health and Safety Code, except for the first offense for the

1 possession of not more than one avoirdupois ounce of marijuana,
2 other than concentrated cannabis.

3 (4) Robbery or extortion.

4 (5) Assault or battery, as defined in Sections 240 and 242 of the
5 Penal Code, upon any school employee.

6 (6) *Acts of bullying, as defined in subdivision (r) of Section*
7 *48900, that have persisted and reoccurred despite repeated efforts*
8 *at remediation and termination of the behavior by the principal*
9 *or the superintendent of schools.*

10 (b) Upon recommendation by the principal, superintendent of
11 schools, or by a hearing officer or administrative panel appointed
12 pursuant to subdivision (d) of Section 48918, the governing board
13 may order a pupil expelled upon finding that the pupil committed
14 an act listed in subdivision (a) or in subdivision (a), (b), (c), (d),
15 or (e) of Section 48900. A decision to expel shall be based on a
16 finding of one or both of the following:

17 (1) Other means of correction are not feasible or have repeatedly
18 failed to bring about proper conduct.

19 (2) Due to the nature of the act, the presence of the pupil causes
20 a continuing danger to the physical safety of the pupil or others.

21 (c) The principal or superintendent of schools shall immediately
22 suspend, pursuant to Section 48911, and shall recommend
23 expulsion of, a pupil that he or she determines has committed any
24 of the following acts at school or at a school activity off school
25 grounds:

26 (1) Possessing, selling, or otherwise furnishing a firearm. This
27 subdivision does not apply to an act of possessing a firearm if the
28 pupil had obtained prior written permission to possess the firearm
29 from a certificated school employee, which is concurred in by the
30 principal or the designee of the principal. This subdivision applies
31 to an act of possessing a firearm only if the possession is verified
32 by an employee of a school district.

33 (2) Brandishing a knife at another person.

34 (3) Unlawfully selling a controlled substance listed in Chapter
35 2 (commencing with Section 11053) of Division 10 of the Health
36 and Safety Code.

37 (4) Committing or attempting to commit a sexual assault as
38 defined in subdivision (n) of Section 48900 or committing a sexual
39 battery as defined in subdivision (n) of Section 48900.

40 (5) Possession of an explosive.

(d) The governing board shall order a pupil expelled upon finding that the pupil committed an act listed in subdivision (c), and shall refer that pupil to a program of study that meets all of the following conditions:

(1) Is appropriately prepared to accommodate pupils who exhibit discipline problems.

(2) Is not provided at a comprehensive middle, junior, or senior high school, or at any elementary school.

(3) Is not housed at the schoolsite attended by the pupil at the time of suspension.

(e) Upon recommendation by the principal, superintendent of schools, or by a hearing officer or administrative panel appointed pursuant to subdivision (d) of Section 48918, the governing board may order a pupil expelled upon finding that the pupil, at school or at a school activity off of school grounds, violated subdivision (f), (g), (h), (i), (j), (k), (l), or (m) of Section 48900, or Section 48900.2, 48900.3, or 48900.4, and either of the following:

(1) That other means of correction are not feasible or have repeatedly failed to bring about proper conduct.

(2) That due to the nature of the violation, the presence of the pupil causes a continuing danger to the physical safety of the pupil or others.

(f) The governing board shall refer a pupil who has been expelled pursuant to subdivision (b) or (e) to a program of study which meets all of the conditions specified in subdivision (d). Notwithstanding this subdivision, with respect to a pupil expelled pursuant to subdivision (e), if the county superintendent of schools certifies that an alternative program of study is not available at a site away from a comprehensive middle, junior, or senior high school, or an elementary school, and that the only option for placement is at another comprehensive middle, junior, or senior high school, or another elementary school, the pupil may be referred to a program of study that is provided at a comprehensive middle, junior, or senior high school, or at an elementary school.

(g) As used in this section, “knife” means any dirk, dagger, or other weapon with a fixed, sharpened blade fitted primarily for stabbing, a weapon with a blade fitted primarily for stabbing, a weapon with a blade longer than 3 ½ inches, a folding knife with a blade that locks into place, or a razor with an unguarded blade.

1 (h) As used in this section, the term “explosive” means
2 “destructive device” as described in Section 921 of Title 18 of the
3 United States Code.

4 *SEC. 3. If the Commission on State Mandates determines that*
5 *this act contains costs mandated by the state, reimbursement to*
6 *local agencies and school districts for those costs shall be made*
7 *pursuant to Part 7 (commencing with Section 17500) of Division*
8 *4 of Title 2 of the Government Code.*

9 ~~SECTION 1. It is the intent of the Legislature to enact~~
10 ~~legislation that would ensure that appropriate actions are taken~~
11 ~~and reporting requirements are implemented for public elementary~~
12 ~~and secondary school pupils who are facing possible suspension~~
13 ~~or expulsion under Article 1 (commencing with Section 48900)~~
14 ~~of Chapter 6 of Part 27 of Division 4 of Title 2 of the Education~~
15 ~~Code as a result of alleged incidents of bullying.~~